IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22/07/2003

CORAM

THE HONOURABLE MR.JUSTICE P.K. MISRA
AND
THE HONOURABLE MR.JUSTICE F.M. IBRAHIM KALIFULLA

W.P. No. 13700 of 1997
and
W.M.P. Nos. 22006 to 22008 of 1997

P. Murugan ..Petitioner

-Vs-

1. The Govt. of Tamil Nadu
repd. by the Secretary
to Govt. P & AR Dept.,
Fort St. George,
Madras - 9.

2. The District Judge,
Sivaganga. ..Respondents

Prayer: Petition under Article 226 of the Constitution of India
praying for a Writ of Certiorarified mandamus to call for the records on the file of 1st respondent in G.O.Ms.215, P and AR (F) Department, dated 27.6.95 and quash the same so far as it alters the promotion within the same category and the deletion of the explanation to rule 3 of the Tamil Nadu Basic Service Rules and further direct the 2nd respondent to promote the petitioner from the post of Office Assistant to the post of Process Server redesignated as Junior Bailiff (Class III category 3).

For Petitioner :: Mr.V. Raghavachari

For Respondents :: Mr.S.T.S. Murthy, Spl.G.P.

:O R D E R

(Order of the Court was made by P.K.MISRA,J.)
Heard the learned counsel for the parties. The petitioner has prayed for quashing G.O.Ms.No.215, P & AR (F) Department dated 27.6.95. The relevant facts are as follows:

2. The petitioner is working as an Office Assistant under the 2nd respondent. He had joined the service of the 2nd respondent as

a Masachlis on 22.9.1993. Thereafter, he was promoted to the post of Office Assistant on 1.11.1994. The aforesaid post is governed by the Special rules for Tamil Nadu Basic Service and comes under Category No.5. Before the impugned G.O.was issued, an Office Assistant or an Attender could be promoted to the next higher category, ie., to the category of Process Server. As per the present G.O. issued by the Government, amending the rules, in sub-rule (a) as subtitled, for the entry in column (1) against the entry "all categories under class III in column (I), the following entries are substituted, namely:-

"Direct recruitment or recruitment by transfer from any other service or transfer from class IV.

(iii) Sub-rule (b) shall be omitted.

(2) rule 4 sub-rules (b) (c) and (c) shall be omitted

(3) in rule 5, in sub-rule (2)-

3. The net result of this amendment is that persons in the Lower Category i.e., in class IV will be eligible to be promoted as Process Servers while persons in class III like Office Assistants, would not be eligible for promotion. This has the effect of not only denying the opportunity of promotion to those belonging to class III and others, but also has the effect of giving additional benefits to class IV, who are ordinarily considered in a lower scale. In other words, the rule, as amended, is arbitrary to the extent that when a person in class IV carrying a lower scale of pay would be eligible to be considered for promotion to the post of Process Server, those belonging to class III like Office Assistants would not eligible for the same.

4. A counter affidavit has been filed by the first respondent and no justification has been made for treating the said persons differently. As per the rules, all qualified Office Assistants, who were eligible were considered whereas after the amendment, such Office Assistants were deprived of such an opportunity.

5. In the counter affidavit filed by the second respondent, the difference in scales of pay both pre-existing, as well as, revised in respect of the posts of Masalchi, Office Assistant and Process Server has been stated which is as under:

SNo	Name of the Post	Pre-existing Scale of pay	Revised Scale of Pay
1	Masalchi	750-12-870-15-945	2500-55-2660-60-3200
2	Office Assistant	750-12-870-15-945	2500-55-2660-60-3200
3	Process Server	800-15-1010-20-1150	2650-65-3300-70-4000

6. From the above, it was pointed out that having regard to the scales of pay of the posts of `Masalchi' and `Office Assistant' and that of `Process Server', it can be easily seen that the post of Process Server is higher in rank and status, though the said post as well as that of Office Assistant are in one and the same class, namely, in Class-III of the Tamil Nadu Basic Service Rules. Whereas, the post of `Masalchi' comes under Class-IV even though the scale of pay of the post of `Masalchi' and `Office Assistant' is one and the same. One other distinctive feature is that while the education qualification for the post of Office Assistant either for direct recruitment or by promotion from Masalchi is 'pass in 8th standard', the same is not the case in the case of post of `Masalchi'.

7. In the above stated circumstances, the grievance of the petitioner is that while by virtue of the amendment, a lesser qualified person could aspire to become a Process Server in a Class-III post, the same does not appear to be the case when it comes to the question of aspirations of an Office Assistant who holds another post with better qualification in the very same Class-III. It was on the above basis, the challenge has been made.

8. Having considered the claims as well as the stand of the respondent and on going through the Special Rules for Tamil Nadu Basic Service, we are of the considered opinion that the amendment brought out under the impugned Government Order, namely, G.O.Ms.No.215 P&AR(F) Department, dated 27-6-1995 does not in any way affect the rights of the persons like that of the petitioner who are holding the post of Office Assistant in clamoring to become a Process Server as per the unamended rule which existed prior to the issuance of the impugned G.O. As stated earlier, the amended rule in respect of Class-III reads as under:

"Class - III
All categories Direct recruitment; or
Recruitment by transfer
from any other Service.
Or Transfer from Class IV"

It is also necessary to refer to Classes IV and V of the Special Rules which is as under:-

"Class-IV and V
All categories Direct recruitment; or
Recruitment by transfer
from any other service;
or Transfer from any other
category in Class IV and V"

9. When we see the constitution of all services under the Tamil Nadu Service which consists of Class-I to V, the post of Process Server and Office Assistant which are classified as Category 3 and 5 respectively in Class-III service, the post of Masalchi is the last category, viz., category 44 in Class-IV of the Tamil Nadu Basic Service. Under Class-V of the Special 8Rules for Tamil Nadu Basic Service, it has been stated as under:-

"Class- V: Any other person who is in basic service as defined in subsidiary definition (iii) under Fundamental Rule 9 and who has not been included in any other service. F.R. 9 (ii) reads as follows:

Basic Service includes all services in the following appointments unless declared by Government to be superior:-
a) Service as Office Assistant, Head Office Assistant, Chobdar or Duffadar;
b) Service in Posts the pay of which does not exceed Rs.750/-
All other service is superior."

10. A conjoint reading of the above stated Classifications of different classes and Categories, makes it clear that while all the categories mentioned in different classes would fall under the primary Heading of 'Basic Service', it would be a distinctive one from a superior service. In fact, while specifically dealing with Class-V, it is mentioned that those persons who are in the basic service as defined under F.R.9(iii) would come under the said Class. F.R.9(iii) refers to the posts of Office Assistant, Head Office Assistant, Chobdar or Duffadar. Thus the status of either an Office Assistant or Head Office Assistant is nonetheless a basic service. Though the post of the Office Assistant has been independently categorised under Class-III, the fact remains that it is one of the categories, which forms part of the service under Special Rules for Tamil Nadu Basic Service.
11. In the above background, if the amended rule falling under Rule 3 relating to 'Appointment' to several Classes and Categories is analysed in respect of Class-III, the method of appointment has now been prescribed under the impugned Government Order by direct recruitment or recruitment by transfer from any other service or transfer from Class-IV. If the said expressions 'recruitment by transfer' from any other `service' is independently examined, we are of the considered view that the `service' mentioned in that part of the Rules is comprehensive enough to include all those who could be recognized as in the service covered by the Special Rules for the Tamil Nadu Basic Service. It is relevant to note and state that while using the above set of expressions, it has not been specified to the effect that the term 'service' mentioned therein, would apply only to a particular Class or Category. Therefore, if on a construction of the rules, which have been specifically referred to by us in the earlier part of our order defining different Classes and Categries, we can safely conclude that the post of 'Office Assistant' falling under Category 5 of ClassIII would nevertheless be a 'service' governed by the Special Rules for Tamil Nadu Basic Service. When such a conclusion can be safely arrived at while interpreting the amended Rules relating to 'Appointment' of Class-III Service, there can be no two opinion as to the manner in which the above said interpretation is made. If that is the conclusion we draw on a detailed analysis of the various relevant rules referred to above, we are of the view that even going by the amended Rules relating to 'Appointment' in Class-III Service, the petitioner who is an Office Assistant and any such Office Assistants holding the post in Tamil Nadu State Judicial Ministerial Service, could validly claim and apply for the post of 'Process Server' as and when the contingency arises for filling up of any such posts for being considered to be appointed for the said post of 'Process Server' on fulfilling the other criteria such as, qualification, etc. We, therefore, hold that the amended rule under the impugned Government Order does not in any way affect the right of the petitioner to claim for the post of 'Process Server' and therefore, there is no necessity to set aside the said amendment. We accordingly hold that in the event of the petitioner satisfying

the other stipulations for being considered for the post of the Process Server, the second respondent shall consider the same and pass appropriate orders dealing with the claim of the petitioner.

12. In the result, the Writ Petition is ordered on the above terms. No costs. Consequently, connected W.M.P. is closed.

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To

1. The Secretary
to Govt. P & AR Dept.,
Fort St. George,
Madras - 9.
2. The District Judge,
Sivaganga.